

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
CINCINNATI DIVISION**

TOTAL QUALITY LOGISTICS, LLC,
4289 Ivy Pointe Boulevard,
Cincinnati, Ohio 45245,

Plaintiff,

V.

TOP QUALITY LOGISTICS, LLC,
c/o Willy Childers, Registered Agent
1340 Center Drive, Suite 101
Dunwoody, Georgia 30338

Defendant.

Case No.: _____

Judge: _____

**COMPLAINT FOR PRELIMINARY
INJUNCTION, PERMANENT INJUNCTION,
AND OTHER RELIEF**

(JURY TRIAL DEMANDED)

For its Complaint for Preliminary Injunction, Permanent Injunction, and Other Relief (the “Complaint”) against Defendant Top Quality Logistics, LLC, Total Quality Logistics, LLC states as follows:

Introduction

1. Plaintiff Total Quality Logistics, LLC (“TQL”) is a federally registered freight broker and a national leader in the third-party logistics and freight brokerage industry. TQL was founded in 1997 in Cincinnati, Ohio. Over the next several years, TQL grew to become one of the largest freight brokerage firms in North America with over 4,200 employees. TQL has a nationwide presence in the third-party logistics industry, with 59 physical offices located in 26 states, and operating across the continental United States and beyond.

2. For several years, TQL has operated its business primarily using the service mark “TQL.” TQL uses this mark in numerous ways in furtherance of promoting and identifying its freight brokerage and related services, ranging from letterhead used to correspond with its

customers and carriers, all the way up to the signage on its corporate headquarters in Clermont County, Ohio.

3. Over the past 20 years, through common law trademark usage and federal registration, TQL has built a family of marks such that the public associates not only the individual marks, but the common characteristics of the family, with TQL. Specifically, TQL has been using the marks “TQL” and “Total Quality Logistics” in connection with freight brokerage services in interstate commerce since at least 1997. TQL registered the mark “TQL” (Reg. No. 3,204,037) in connection with “freight brokerage” and “Total Quality Logistics” (Reg. No. 3,302,107) in connection with “freight brokerage services” with the United States Patent and Trademark Office (the “PTO”) in 2007. In addition, TQL registered “TQL & Design” (Reg. No. 4,393,802) in connection with “freight brokerage” with the PTO in 2013.

4. Both the “TQL” and “Total Quality Logistics” marks have achieved “incontestability” status under Section 15 of the Lanham Act due to their five consecutive years of continuous use from their registration. Incontestability status is considered to be conclusive evidence of the following rights: (a) the validity of the registered mark, (b) the registration of the mark, (c) the owner’s ownership of the mark, and (d) the owner’s exclusive right to use the mark with the registered goods and services.

5. A few months ago, in May 2017, Defendant Top Quality Logistics, LLC (“Top Quality”) began providing freight brokerage services in the third-party logistics industry. Upon information and belief, Top Quality has been conducting business under the marks “TQL” and “Top Quality Logistics.”

6. To this point, one of Top Quality’s top employees and/or owners, Tim Murray, is a former TQL employee. Murray has not worked for TQL for over two years. However, despite

this fact, Murray's "profile picture" for his Facebook account depicts him wearing a polo shirt bearing TQL's registered mark, "TQL." In addition, Murray has created at least one post on his Facebook account soliciting freight business on behalf of Top Quality in which he utilizes a logo and motto, both of which are strikingly similar to those used by TQL.

7. By operating a third-party logistics company in the same markets as TQL using the marks "TQL" and "Top Quality Logistics," Top Quality will create customer confusion and infringe on TQL's service mark(s). This is especially true given the fact that, judging from Murray's conduct, Top Quality intends to utilize marks, logos, and mottos similar to those used by TQL.

8. Before filing this action, TQL made multiple demands that Top Quality cease and desist its unauthorized and unlawful use of TQL's marks. To date, however, Top Quality has refused to comply with those demands. As such, TQL files this action to enjoin Top Quality's unlawful conduct and to recover all damages TQL has sustained as a result of Top Quality's unlawful scheme.

Parties, Jurisdiction, and Venue

9. Plaintiff TQL is an Ohio limited liability company with its principal place of business at the above-captioned address. TQL is a federally registered freight broker that provides third-party logistics services to customers across the continental United States and beyond.

10. Upon information and belief, Defendant Top Quality is a Georgia limited liability company with its principal place of business at the above-captioned address. Top Quality is a federally registered freight broker that provides third-party logistics services across the continental United States.

11. This Court has original subject matter jurisdiction over the instant action pursuant to 28 U.S.C. §§ 1331, with reference to 15 U.S.C. §§ 1114, 1116, and 1125.

12. This Court has personal jurisdiction over Top Quality because, among other reasons, Top Quality intentionally interfered with a trademark owned by, and committed a tortious act against, an Ohio company.

13. Venue is proper in this Court because, among other reasons, Top Quality intentionally interfered with a trademark owned by, and committed a tortious act against, a company located in Clermont County, Ohio, TQL.

Factual Background

A. The Nature of TQL's Business

14. TQL is a national leader in the logistics industry, providing shipping services, third-party logistics services, freight brokerage services, truck brokerage services, and assistance with supply-chain management across the continental United States and beyond.

15. TQL's customers are companies that want to ship goods from one location to another. These include companies wishing to ship their own goods, as well as other freight brokers that have already agreed to ship goods on behalf of another customer.

16. TQL does not own or operate any of its own trucks or trucking equipment. Nor does it employ any drivers to haul freight. Instead, TQL engages and coordinates independent carriers that are able and willing to haul freight at the times and places needed by TQL's customers.

B. TQL's Registration and Use of the Pertinent Service Marks

17. For about two decades, TQL has operated in the third-party logistics industry under the names "Total Quality Logistics" and "TQL."

18. In addition, for several years, TQL has used the service mark “TQL” in connection with various aspects of its business operations. Some of these aspects include, without limitation, the signage on TQL’s corporate headquarters, TQL’s website and domain name, letterhead used for TQL’s correspondence with its customers and carriers, materials used for employee recruitment, marketing efforts regarding TQL’s freight logistics services, community outreach efforts, and several other purposes.

19. In August 2006, TQL filed to register the mark “TQL” in connection with “freight brokerage services” with the PTO, asserting that TQL first began using the mark in interstate commerce in 1997. About one year later, in January 2007, the PTO registered “TQL,” and assigned it Registration No. 3,204,037.

20. In 2016, the “TQL” mark achieved incontestability status through five years of continuous use. TQL submitted a Section 15 declaration to memorialize the incontestability status of the “TQL” mark and the PTO issued a Notice of Acknowledgement.

21. In April 2006, TQL filed to register the mark “Total Quality Logistics” in connection with “freight brokerage services” with the PTO, asserting TQL first began using the mark in interstate commerce in 1997. About one year later, in October 2007, the PTO registered “Total Quality Logistics” and assigned it Registration No. 3,302,107.

22. In 2017, the “Total Quality Logistics” mark achieved incontestability status through five years of continuous use. TQL submitted a Section 15 declaration to memorialize the incontestability status of the “Total Quality Logistics” mark and the PTO issued a Notice of Acknowledgement.

23. In August 2012, TQL filed to register the mark “TQL & Design” in connection with “freight brokerage” with the PTO, asserting that TQL first began using the mark in

interstate commerce in 2012. About one year later, in August 2013, the PTO registered “TQL & Design” and assigned it Registration No. 4,393,802.

24. To date, TQL remains the registered owner of marks “TQL,” “Total Quality Logistics,” and “TQL & Design.”

C. Top Quality’s Infringement of TQL’s Marks and Attempts to Confuse TQL’s Customers

25. In or around May 2017, Top Quality organized as a Georgia limited liability company, and in or around June 2017, Top Quality became a federally registered freight broker.

26. Upon information and belief, since June 2017, Top Quality has been providing third-party logistics services to customers using the names “TQL” and “Top Quality Logistics.”

27. One of Top Quality’s top employees and/or owners, Tim Murray, is a former employee and freight broker of TQL. Murray has not worked for TQL for more than two years.

28. Recently, however, Murray’s “profile picture” on the Facebook website depicted him wearing a polo shirt bearing TQL’s registered service mark “TQL.” An accurate copy of that picture is attached as Exhibit A.

29. In addition, Murray has created at least one “post” to his account on the Facebook website soliciting freight business on behalf of Top Quality. An accurate copy of that Facebook post is attached as Exhibit B.

30. In that post, Murray uses a logo depicting an Earth-shaped sphere with multiple intersecting lines running across it.

31. This logo is strikingly similar to TQL’s registered mark “TQL & Design,” which also depicts an Earth-shaped sphere with one or more intersecting lines running across it to resemble travelling freight, and which TQL uses frequently in its business operations.

32. Also in that post, Murray states that individuals can call Top Quality “24/7 365 days a year.”

33. Again, this statement is strikingly similar to one of TQL’s mottos, which is “24 hours a day, 7 days a week, 365 days a year.” TQL uses this motto in several aspects of its business, including its correspondence with customers and carriers. And this phrase is also utilized in TQL’s mission statement, contained on the homepage of TQL’s website, which is “[e]xceed the customer’s expectations at all times and handle their transportation requirements from the moment of pickup until delivery 24/7/365.”

34. By operating a third-party logistics company using the names “TQL” and “Top Quality Logistics” in the same market as TQL, Top Quality has infringed on TQL’s trademarks and will cause customer confusion. This is especially true where, as here, Murray markets Top Quality’s services with TQL apparel, logos, and mottos.

35. TQL has contacted Top Quality on multiple occasions, demanding that it cease and desist its unlawful use of the names “TQL” and “Top Quality Logistics” in the operation of its third-party logistics company.

36. Unfortunately, Top Quality has refused to comply with TQL’s demands.

37. If Top Quality’s conduct is permitted to continue unrestrained, it will cause customer confusion and irreparable harm to TQL’s brand and goodwill. As such, TQL seeks a preliminary injunction, permanent injunction, and damages in this action.

Count One
Trademark Infringement – Likelihood of Confusion

38. TQL incorporates all preceding allegations contained in this Complaint as if they were fully restated herein.

39. Through TQL's use of the "TQL" and "Total Quality Logistics" service marks, TQL has developed common law rights in these marks.

40. Top Quality's use of the marks "TQL" and "Top Quality Logistics" in connection with its third-party logistics company in the same market as TQL has been done with knowledge of TQL's prior use and registration of the marks "TQL" and "Total Quality Logistics."

41. Top Quality's use of the marks "TQL" and "Top Quality Logistics" have and will continue to create a likelihood of confusion through an association of sponsorship, affiliation, or endorsement by TQL in an appreciable number of consumers of third-party logistics services.

42. Consumers that see Top Quality's advertisements or utilize Top Quality's services will assume that TQL has somehow endorsed or approved Top Quality's use of the marks "TQL" and "Top Quality Logistics," which is false.

43. The goodwill of TQL's service mark has enormous value, and TQL will continue to suffer immediate and irreparable harm should Top Quality's unauthorized use of the marks "TQL" and "Top Quality Logistics" continue.

44. Top Quality's unauthorized use of these marks in connection with its offering of third-party logistics services is intended to and will divert to Top Quality the benefit of TQL's business reputation and goodwill.

45. Top Quality's unauthorized use of these marks will hinder TQL's rights and its ability to naturally control, grow, and expand its business.

46. Therefore, TQL prays that the Court issue a preliminary and permanent injunction prohibiting Top Quality from any further use of the marks "TQL" or "Top Quality Logistics," and that the Court award damages to TQL in an amount to be determined at trial; plus treble damages, a disgorgement of Top Quality's profits earned as a result of its infringement, and

TQL's court costs and attorney's fees, as provided by statute; plus pre- and post-judgment interest.

Count Two
False Designation of Origin and Unfair Competition

47. TQL incorporates all preceding allegations contained in this Complaint as if they were fully restated herein.

48. Top Quality's use of the marks "TQL" and "Top Quality Logistics" in connection with its third-party logistics company in the same market as TQL has been done with knowledge of TQL's prior use and registration of the marks "TQL" and "Total Quality Logistics."

49. Top Quality is an unauthorized user of these marks, and TQL cannot exercise any control over the nature or quality of Top Quality's services.

50. Upon information and belief, Top Quality's false designation of the origin of its services has been willful and deliberate, designed specifically to trade upon and/or usurp the consumer goodwill enjoyed by TQL as a result of its decades of success in the third-party logistics industry.

51. Top Quality's unauthorized use of these marks in connection with its offering of third-party logistics services will hinder TQL's rights and ability to control, grow, and expand its business.

52. TQL's customer goodwill is of enormous value, and TQL will suffer irreparable harm if Top Quality's false designation of the origin of its services is permitted to continue.

53. Top Quality's false designation of the origin of its services will likely continue unless enjoined by this Court.

54. Therefore, TQL prays that the Court issue a preliminary and permanent injunction prohibiting Top Quality from any further use of the marks "TQL" or "Top Quality Logistics,"

and that the Court award damages to TQL in an amount to be determined at trial; plus treble damages, a disgorgement of Top Quality's profits earned as a result of its false designation, and TQL's court costs and attorney's fees, as provided by statute; plus pre- and post-judgment interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Total Quality Logistics, LLC requests that this Court issue a judgment as follows:

- a. On Count One, issue a preliminary and permanent injunction prohibiting Top Quality from any further use of the marks "TQL" or "Top Quality Logistics," and an award of damages to TQL in an amount to be determined at trial; plus treble damages, a disgorgement of Top Quality's profits earned as a result of its infringement, and TQL's court costs and attorney's fees, as provided by statute; plus pre- and post-judgment interest;
- b. On Count Two, issue a preliminary and permanent injunction prohibiting Top Quality from any further use of the marks "TQL" or "Top Quality Logistics," and an award of damages to TQL in an amount to be determined at trial; plus treble damages, a disgorgement of Top Quality's profits earned as a result of its false designation, and TQL's court costs and attorney's fees, as provided by statute; plus pre- and post-judgment interest; and
- c. Award TQL any other relief to which it is entitled at law or in equity.

Respectfully Submitted,

/s/ Ryan S. Lett

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JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

/s/ Ryan S. Lett

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